



**THE NATIONAL ASSOCIATION OF BROADCASTERS'
SUBMISSION TO ICASA ON THE PROPOSED CODE
OF CONDUCT FOR LICENSEES AS PUBLISHED IN
NOTICE 767 OF 2007, GOVERNMENT GAZETTE
NUMBER 29993, DATED 18 JUNE 2007**

20 JUNE 2007

1. INTRODUCTION

- 1.1. The National Association of Broadcasters (“the NAB”) would like to take this opportunity to thank the Independent Communications Authority of South Africa (“ICASA”) for the opportunity to make a written representation to notice number 767 of 2007, published in government gazette number 29993, dated 18 June 2007 (“the notice”). In the notice, ICASA invites interested persons to submit written representations to its intention to make regulations in terms of sections 4 and 69 the Electronic Communications Act (“the Act”), setting out the Code of Conduct for licensees.
- 1.2. The NAB would like to be given the opportunity to make oral representations should ICASA deem it fit to hold oral representations with regards to this process.
- 1.3. The NAB is the leading representative of South Africa’s Broadcasting industry. The NAB aims to further the interests of the broadcasting industry in South Africa by contributing to its development. The NAB membership includes:
 - Three television public broadcasting services, and eighteen sound public broadcasting services, of the South African Broadcasting Corporation of South Africa (“the SABC”);
 - All the commercial television and sound broadcasting licensees;
 - Both the licensed common carrier and the selective and preferential carrier broadcasting signal distributors;
 - Over thirty community sound broadcasting licensees, and community television broadcasting service, Trinity Broadcasting Network (TBN)
- 1.4. The NAB will focus primarily on the broadcasting-related provisions of the proposed regulations, given its particular expertise, although it will comment on other issues as it sees fit.

2. PURPOSE OF THE PROPOSED CODE

2.1 The Authority states in the proposed regulation that it aims to establish a Code of Conduct for all licensees in terms of Chapter 12, section 69(1) of the Act.

2.2 Section 69(1) of the Act reads:

“The Authority must, as soon as reasonably possible after the coming into force of this Act, prescribe regulations setting out a code of conduct for licensees subject to this Act and persons exempted from holding a licence in terms of section 6 to the extent such persons provide a service to the public”

2.3 Section 69(2) of the Act reads:

“The Authority may develop different codes of conduct applicable to different types of services. All electronic communications network services licence and electronic communications service licensees must comply with the Code of Conduct for such services as prescribed”

2.4 The NAB submits that reading section 69(1) in conjunction with 69(2) clearly sets out the intent of Chapter 12 of the Act. It is the NAB’s submission that the intent of Chapter 12 is clearly to direct the Authority to establish a Code or Codes of Conduct for communications network service licensees and electronic communication service licensees and does not include broadcasting services.

2.5 The NAB submits that Chapter 5, section 54(1) and 54(2) clearly require the Authority to establish a separate Code of Conduct for broadcasting service licensees. These clauses read as follows:

54(1)“The Authority must as soon as reasonably possible after the coming into effect of this Act and subject to this Act, review existing regulations, and prescribe regulations setting out a code of conduct for broadcasting service licensees.”

54(2)“Subject to the provisions of subsection 3, all broadcasting

service licensees must adhere to the code of conduct for broadcasting service licensees as prescribed.”

- 2.6 The existing Code of Conduct for broadcasting services, in accordance with section 78(1) of the IBA Act of 1993 as amended, was published on 14 February 2003 in notice 446 of 2003, government gazette number 24394. The NAB submits that section 54(1) requires ICASA to review the existing Code and publish such regulations in terms of section 54 of the Act.
- 2.7 Furthermore, in its position paper on subscription broadcasting services, issued 01 June 2005, the Authority afforded the NAB the opportunity to develop a specific Code of Conduct for subscription broadcasting services. The NAB submitted its proposed Code of Conduct for subscription broadcasting services to the Authority on 01 June 2006 for approval. The position paper stated:
- “... subscription broadcasting services shall, pending a body contemplated in section 56(2) of the IBA Act, adhere to the Code of Conduct for Broadcasters promulgated from time to time by the Authority. A body contemplated in section 56(2) shall be afforded an opportunity to develop and adopt its own Code of Conduct for subscription broadcasting services within twelve months of the publication of the Position Paper. The Authority will need to be satisfied that members of the subscription broadcasting services industry subscribe and adhere to the Code...”*
- 2.8 In light of the above points raised, the NAB submits that the Code of Conduct for broadcasting services should not be dealt with in terms of section 69(1) of the Act but should be dealt with separately in terms of section 54 of the Act.
- 2.9 It is the NAB’s view that the outcome of an enquiry as envisaged in section 54 of the Act will result in a Code of Conduct for broadcasting services with three sections i.e. a general section containing generic provisions applicable to all broadcasting licensees, a Code of Conduct specific to free-to-air broadcasting licensees and a third section containing a Code of Conduct specific to subscription broadcasting licensees.

- 2.10 However, should the Authority decide to continue with publishing the Code of Conduct for broadcasting services in terms of section 69 of the Act and as part of a Code for all licensees, the NAB wishes to raise general comments as contained in section 3 of this submission.

3. GENERAL COMMENTS

- 3.1 The NAB wishes to point out that section 54(3) of the Act provides for the right of broadcasters to self-regulate and for a recognized body that's meets certain criteria to apply its own Code. This provision is not contained in the proposed Code. The NAB submits that this provision must be captured in the proposed Code.
- 3.2 The NAB submits that the definition of the "watershed period" in the proposed Code differs from the definition in the existing Code of conduct for broadcasting services. Furthermore, the definition is also in conflict with the provisions clause 5.6 of the proposed Code as it prescribes two different starting times for the watershed period in relation to subscription broadcasting services. This needs to be corrected.
- 3.3 The NAB submits that amendments to the Code of Conduct for broadcasting services can only be made in a review process as envisaged in section 54 of the Act. Amendments to the Code can therefore only be made after a public consultation process and should the Authority wish to include the broadcasting Code of Conduct in a general Code in terms of section 69, this should be done without any amendments.
- 3.4 The NAB also suggests that the terminology used in the Code be consistent with that of the Act. Terms such as consumer, subscriber or end user should be used throughout.

4. CONCLUSION

The NAB would again like to thank the Authority for the opportunity to comment on the proposed regulations. The NAB trusts that the Authority will take cognisance of the submissions made in this representation, in formulating a regulatory framework for broadcasting in South Africa.